SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

October Term, 1958

No. 209

THERESA RITA ZAWADA, *Petitioner*

v.

PENNSYLVANIA SYSTEM BOARD OF ADJUSTMENT, BROTHERHOOD OF RAILWAY & STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES.

BRIEF FOR RESPONDENT OPPOSING PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

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COUNTER STATEMENT OF QUESTION PRESENTED FOR REVIEW

May a former officer of a labor union, whose successor in office he prevented from functioning by wrongfully withholding necessary files and by obtaining a Court order keeping him in office during the litigation which adversely determined his right to office, recover compensation quantum meruit, in the amount of his former salary, for services rendered, over the objection of the union, during the litigation?

STATEMENT OF THE CASE

Joseph P. Zawada, husband and assignor of the plaintiff, had held the office of "Division Chairman" in the Defendant Brotherhood of Railway Clerks. This was a salaried position provided for in the Brotherhood Constitution and By-laws. When there are several local lodges on a single division, the local lodge Chairmen of Protective Committee elect a Division Chairman *from among their own number*. Mr. Zawada, the local chairman of Girard Lodge 100, had been so elected Division Chairman of the Philadelphia Terminal Division of the Pennsylvania Railroad for a four-year term beginning in January, 1953.

In January, 1954, Girard Lodge 100 and three other Pennsylvania Railroad lodges quarreled with the International officers (known as the Grand Lodge) over the relative seniority of Reading Company employees who had followed their jobs when Universal Carloading Company (a freight forwarder) transferred its operations from a Reading Company freight station to the Pennsylvania Railroad's new Freight Station at Butler Street, Philadelphia. The four local lodges, in order to bring pressure on the Grand Lodge, refused to pay their "per capita tax" (that portion of the dues collected by the local lodges which belonged to the Grand Lodge). Under the Brotherhood Constitution this refusal worked an automatic forfeiture of the charters of the local lodges. The members of the four local lodges were transferred to a new Lodge 124. The offices in the "rebel" lodges became vacant. Mr. Zawada was no longer Chairman of Lodge 100, was no longer eligible to be Division Chairman. The Grand Lodge notified him to turn over his grievance files to his successor and notified the financial officers to turn over their books,

records and funds to the Grand Lodge, all as provided in the Brotherhood Constitution and By-laws. They refused. The Grand Lodge thereupon went into court to compel this action. *Grand Lodge, Brotherhood of Railway & Steamship Clerks, v. Girard Lodge*, 384 Pa. 248, 120 A. 2d 527. On motion of the local lodges, the Common Pleas Court enjoined the Grand Lodge from processing the grievances in Mr. Zawada's hands during the litigation (228a). An arrangement was worked out whereby Mr. Zawada and his successor jointly processed grievances (231a).

The Supreme Court of Pennsylvania held that the charters of the local lodges were forfeited under the Brotherhood Constitution, and ordered the defendants to deliver their books, records and funds to the Grand Lodge. *Grand Lodge v. Girard Lodge, supra.* This Court refused certiorari, 351 U. S. 985. The books and records, including the grievance files, were turned over to the Grand Lodge in July, 1956, twenty-nine months after the start of the "Butler Street rebellion."

This suit (brought by Mrs. Zawada to whom her husband had assigned his claim) was brought to recover Mr. Zawada's "wages and other emoluments" during the twenty-nine months (8a). The Common Pleas Court held that Mr. Zawada was not the de jure holder of the office during the twenty-nine months and found for the defendant, but saved for the plaintiff her right to sue on quantum meruit (243a). Judgment entered for the defendant on September 20, 1956, was never appealed from (3a). Instead, plaintiff elected to amend her "Answer to New Matter" which the Common Pleas Court, in a second opinion, found to be improper pleading (248a). Thereafter, shortly before the time for appealing the judgment ex-

pired, the parties stipulated that plaintiff might proceed, in the original suit, on the defective pleading, and on the evidence already taken, to push her claim on quantum meruit, but that the Court's first opinion on the salary issue should be res judicata. The judgment was opened on this Stipulation (255a).

The Common Pleas Court, in a third opinion, dismissed the quantum meruit claim also, on the ground that Mr. Zawada's services had been forced on an unwilling defendant (256a). From the judgment thereupon entered, plaintiff appealed to the Supreme Court of Pennsylvania.

The Supreme Court of Pennsylvania held that under the stipulation the correctness of the holding as to the salary was no longer open to the plaintiff. It affirmed the lower court on the quantum meruit point. *Zawada v. Penna. System Board of Adjustment, Brotherhood of Railway Clerks*, 392 Pa. 207 (Appendix A to the petition for certiorari, p. 11).

There were no dissents in either of the lower courts.

ARGUMENT

Under the plaintiff's own stipulation the only question here is whether, under the principles of the law of quantum meruit, one who forces his services on an employer is entitled to compensation. She makes no pretense that any federal or constitutional question is involved in that decision. Her point here is that the earlier decision of the Court below, which she stipulated should be res judicata, was in error and involved a federal question.

This earlier decision was that plaintiff's husband was no longer the de jure holder of an office to which he had

been elected, because he had ceased to be eligible for that office, and therefore was not entitled to the salary attached to it. The federal question which plaintiff seeks to read into this decision is based on the averment that "By fiat of the Grand President—with no semblance of Due Process —an official elected by the membership was deposed in the middle of his term. . . ." (Petition, p. 6.)

This conclusion is based on certain averments in the Petitioner's Statement of the Case. It is because the Record does not support these averments that we have restated the case in some detail.

The Grand President did *not* revoke the charters of the local lodges (as stated at page 3 of the petition); the charters were automatically revoked, under the Brotherhood Constitution, by the action of the local lodges themselves. In this action Mr. Zawada himself played a large part (*Grand Lodge v. Girard Lodge, supra*, at p. 250; *Zawada v. Pennsylvania System Board, supra*, Appendix, at page 21).

The reason Mr. Zawada could no longer serve as Division Chairman was *not* that four of the five lodges which had elected him to office had lost their charters (as stated at page 3 of the petition), but because Mr. Zawada's own lodge had forfeited its charter, thus abolishing his position in that lodge and making him ineligible to hold the higher office. *Zawada v. Pennsylvania System Board of Adjustment, supra*, appendix, p. 12.

There is, then, no arbitrary fiat of the Grand President removing Mr. Zawada from office. He was simply declared to be ineligible to continue in office. The impact of the decision is not, therefore, "to place any arbitrary act of a union leader outside the orbit of judicial review"

(petition, p. 8). There has been judicial review; there is no arbitrary act; the whole decision stems from the impact of acts in which Mr. Zawada was himself the prime mover, on the Brotherhood Constitution. The petition for certiorari asks this court to review this decision even though the plaintiff herself has stipulated that that point was rightly decided, viz., that Mr. Zawada did not hold the office of Division Chairman during the period in question.

The petitioner's second point is the same as her first except that it is tied to the Railway Labor Act. Admittedly there is nothing in the Railway Labor Act which concerns the right of a labor union officer to his salary, but plaintiff argues that since a labor union must exercise its powers fairly, the Act forbids "the wanton removal of duly elected officials" (petition, p. 10). But Mr. Zawada was not removed from office, either wantonly or for good cause. And to repeat, the plaintiff has stipulated that the decision that he no longer held office is res judicata.

The two opinions of the Supreme Court of Pennsylvania, read together, and especially when read with the four opinions of the Court of Common Pleas, make it clear that this case is a mere corollary of *Grand Lodge v. Girard Lodge, supra.* The Grand Lodge case involved the propriety of the forfeiture of the charters under the Brotherhood Constitution; the local lodges contended there, as the plaintiff does here, that the forfeiture was an arbitrary act of the Grand President. That case decided that defunct lodges and their officers must turn over their records and funds to the Grand Lodge. Among these officers was Mr. Zawada, and among the records, were the grievance files, which up till then he had refused to surrender. Now comes the officer who wrongfully refused to relinquish the

files and thereby made it impossible for his successor to function without him, claiming compensation for the services thus forced on the union. If the Grand Lodge case involved no federal question,—and certiorari was denied, 351 U. S. 985,—then, a fortiori, this case does not. This case presents a simple matter of domestic Pennsylvania law, viz., whether a man, who, having lost his office, has made it impossible for his successor to function, is entitled to compensation for the services he does not permit his successor to perform.

CONCLUSION

It is respectfully submitted that the petition for certiorari should be denied.

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